

- (2) Did the Administrative Law Judge err in denying claimant medical treatment by finding claimant's injury not to be work related?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) The first issue the Appeals Board will address is whether it has jurisdiction to review this preliminary hearing Order. A previous preliminary hearing was held in this case on February 1, 1996, that resulted in an Order entered by the Administrative Law Judge dated February 2, 1996. At that preliminary hearing, the respondent stipulated that claimant was injured when he fell off a truck on October 26, 1994, while he was working for respondent. As a result of that fall, claimant received a laceration to his head and complained of injuries to his back, left knee and legs.

Claimant received medical care for his injuries from Robert E. Wray, D.O., Randy A. Schmidt, D.C., Mark D. Pick, D.C., and Guillermo Garcia, M.D. Dr. Garcia on September 1, 1995, performed a partial lateral meniscectomy on claimant's injured left knee. Respondent had furnished and paid the medical expenses for some of claimant's medical treatment but had not authorized or paid for the surgery performed by Dr. Garcia. In the first preliminary hearing Order dated February 2, 1997, the Administrative Law Judge ordered all outstanding medical expenses paid prior to February 1, 1996, and temporary total disability benefits paid from September 1, 1995, through October 23, 1995. Claimant also made an additional preliminary hearing request for continued medical treatment for his back and leg complaints. The Administrative Law Judge denied this request finding that the preliminary hearing record did not contain medical evidence to substantiate further need for medical treatment for claimant's back or legs.

Following that Order, claimant's attorney arranged for claimant to be examined by Jane K. Drazek, M.D., in Wichita, Kansas. Dr. Drazek examined claimant on July 27, 1996, and found, in regard to claimant's back and leg complaints, spastic paraparesis of unknown etiology. The doctor recommended that claimant be examined by a neurologist and imaging studies be made of claimant's spinal cord.

Claimant requested, at the November 20, 1996, preliminary hearing, an evaluation by a neurologist for the purpose of determining whether claimant had a need for medical treatment for his back and leg complaints. The Administrative Law Judge then ordered claimant to undergo an independent medical examination by neurosurgeon Paul S. Stein, M.D., of Wichita, Kansas.

Dr. Stein examined claimant on December 18, 1996, and found myelopathy which is an abnormality in the spinal cord probably caused by compression of the spinal cord. Claimant then had an MRI scan on January 8, 1997, that found severe spinal stenosis and disc protrusion at the C5-C6 vertebrae level. In a supplement report dated January 8, 1997, Dr. Stein recommended that claimant undergo myelogram testing which

would determine the appropriate surgical procedure that needed to be followed in an attempt to relieve claimant's symptoms.

The Administrative Law Judge, in the preliminary hearing Order dated April 28, 1997, found claimant's request for a neurological evaluation had been satisfied. The Administrative Law Judge further found, after reviewing Dr. Stein's independent medical report, that Dr. Stein had not definitely stated that claimant's cervical disc herniation was work related. The Administrative Law Judge went on to find that claimant had not expressly requested medical treatment beyond the evaluation and, therefore, he declined to order the medical treatment.

Respondent, in its brief to the Appeals Board, argues that the Appeals Board does not have jurisdiction to review this preliminary hearing Order. Respondent contends that the only preliminary request claimant made was for additional medical treatment. The respondent goes on to argue that the preliminary hearing statute gives the administrative law judge specific authority to decide whether or not claimant is in need of medical treatment for work-related injury. Respondent asserts that since the compensability issue was decided at the previous preliminary hearing, the Appeals Board does not have jurisdiction to review this preliminary hearing Order.

The Appeals Board finds it does have jurisdiction to review this preliminary hearing Order because the question before the Administrative Law Judge and now before the Appeals Board is whether claimant's cervical herniated disc and spinal stenosis was either caused or aggravated by claimant's October 26, 1994, accident at work. Therefore, the jurisdictional issue of whether claimant's accidental injury arose out of and in the course of his employment has been raised. See K.S.A. 44-534a, as amended.

Before the Administrative Law Judge issued this preliminary hearing Order, respondent took the evidentiary deposition of Dr. Stein on April 9, 1997. Claimant questions whether the Administrative Law Judge had available for review this deposition before issuing the Order. The Appeals Board notes that the Administrative Law Judge, in the preliminary hearing Order, only refers to Dr. Stein's independent medical report and does not refer to Dr. Stein's deposition testimony. The Appeals Board has reviewed Dr. Stein's independent medical examination reports dated December 18, 1996, and January 8, 1997, and finds the doctor did not express an opinion concerning what, if any, causal relationship exists between claimant's October 26, 1994, work-related accident and his cervical spine condition. However, Dr. Stein did express an opinion in regard to this relationship in his deposition.

Therefore, the Appeals Board finds it is appropriate, under the facts and circumstances of this case, to remand the case to the Administrative Law Judge to consider Dr. Stein's deposition testimony, if the Administrative Law Judge did not have an opportunity to consider the testimony before entering this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore, dated April 28, 1997, should be, and is hereby, remanded to the Administrative Law Judge to consider, if he has not already done so, the evidentiary deposition of Dr. Stein. The Appeals Board does not retain jurisdiction over this preliminary hearing Order. The Administrative Law Judge is requested to enter another preliminary hearing Order in this case following the remand.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: John D. Shultz, Dodge City, KS
Douglas C. Hobbs, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director